

REMARKS

By the foregoing amendment, claim 34 has been incorporated into claim 31, and thereby into all of the pending claims. Claim 35 has been amended to conform to this change. An obvious typographical error in claim 32 has been corrected.

The claimed invention addresses the technical problem of providing soft caramels in which the gelatin normally present is replaced by a non-animal substance that has properties such as low elasticity, high water dispersibility, good bodying and texturing properties, good mouthfeel and no characteristic flavor. This has been accomplished by combining a soft caramel base which contains at least one polysaccharide hydrocolloid as texturing agent, crystalline isomaltulose and a noncrystalline sweetener phase which is maltitol syrup, polydextrose, hydrogenated starch hydrolysate or a mixture thereof. A particular feature of this soft caramel is that the crystalline sweetener phase is isomaltulose, i.e., the only crystalline sweetener present is isomaltulose. Non-crystalline high intensity sweeteners can be present and the composition is sucrose-free.

It has been surprisingly established that in this combination, the polysaccharide hydrocolloid has properties that enable the complete replacement of gelatin as texturing agent in soft caramels while retaining the special texture and consistency of the soft caramels. Moreover, the temperature stability of crystalline isomaltulose can be insufficient. See, e.g., "Coloration and Other Chemical Changes in the Manufacture of

Palatinose Candy", and "Application for the Approval of Isomaltulose", both of record, which show that crystalline isomaltulose is heat-sensitive, shown by discoloration, at temperatures over 100°C, such as used in preparation of the instant product (Example 1), and especially over 120°C used in the examples of Barrett reference. Surprisingly, the temperature stability of crystalline isomaltulose is considerably improved by stabilizing effect of the polysaccharide hydrocolloids in the claimed combination. These aspects of the invention are unexpected and unpredictable.

The rejection of claims 30-35, 38-42, 44-47 and 49 under 35 USC § 103 over Barrett in view of Koji is respectfully traversed.

Barrett discloses a chewy confectionary product in which gelatin has been completely replaced by oxidized starch and which contains sugar or a sugar substitute, or both. Among the substituted sugars mentioned is Isomalt, a mixture of alcohols resulting from the hydrogenation of isomaltulose. There is no teaching or suggestion of the use of isomaltulose, which is a single compound, namely the disaccharide 6-O- α -D-glucopyranosyl-D-fructose. The Examiner previously acknowledged this deficiency exists. All of the examples in Barrett employ a single sweetener which is either sucrose or crystalline sucrose. The claims of the present application specifically exclude the possible presence of sucrose.

Barrett does not recognize the need to simultaneously provide a crystalline sweetener phase and a non-crystalline sweetener phase in a gelatin-free soft caramel.

At column 3, lines 31-37 and at column 4, lines 39-54, Barrett teaches the use of syrup and/or sugar. The person skilled in the art would learn from Barrett that the chewy confectionary product provided needs to comprise a non-crystalline, a semi-crystalline or a crystalline material such as crystallized or non-crystallized sucrose (see column 3, lines 31-35) but fails to suggest that a very specific crystalline sweetener phase must be present, that that specific crystalline sweetener is isomaltulose and it is the only crystalline sweetener present in the caramel, and that the non-crystalline sweetener phase must be present and be maltitol syrup, polydextrose or hydrogenated starch hydrolyzate.

Koji teaches that crystalline palatinose exists but states on page 5 that when an attempt was made to use palatinose alone instead of sucrose and starch syrup while eliminating wheat flour, significant problems resulted. Koji found that by forming a caramel paste and adding palatinose microcrystals at a temperature at which they did not melt could address those problems when the composition contains palatinose, other non-sucrose sugars, milk protein and lipids (page 7). Similar to Barrett, Koji does not teach or suggest using a non-crystalline sweetener phase which is maltitol syrup, polydextrose or hydrogenated starch hydrolyzate or a combination thereof, in combination with a crystalline phase which is isomaltulose together with a polysaccharide hydrocolloid to produce a gelatin-free soft caramel with the advantages of the present invention.

The Examiner will note that Koji teaches the combination of powdered palatinose with a palatinose syrup and this is in contrast to the present invention which contains a non-crystalline phase of maltitol syrup, polydextrose or hydrogenated starch hydrolyzate. The combination of such a non-crystalline phase in combination with a crystalline sweetener which is only isomaltulose is a particular feature of the present invention. As pointed out in the paragraph bridging pages 2 and 3 of the present application, the non-crystalline phase in the soft caramel mass serves to inhibit the crystallization of components and to stabilize the moisture and also has a crucial role in the formation of body and strength and viscosity of the soft caramel mass and effects the chewability of the composition. There is nothing in Koji, or Barrett, which suggests that a non-crystalline sweetener phase which is not palatinose but instead is polydextrose, hydrogenated starch hydrolyzate or maltitol syrup in combination with a crystalline sweetener phase which is isomaltulose only, in combination with a polysaccharide hydrocolloid provides a soft caramel, which is gelatin-free and still has a very attractive texture and chewability, as well storage capability.

It is respectfully submitted that the combination of Barrett and Koji would not achieve the claimed invention nor suggest how to do so to one of ordinary skill in the art. Accordingly, withdrawal of the rejection is respectfully solicited.

Since claim 34 is now effectively incorporated into claims 36, 37, 43, 48, 50, and 61, the rejection under 35 U.S.C. § 103 over Barrett in view of Koji in further view of

Willibald-Ettle is moot. In addition, the further reference does not cure any of the basic deficiencies in the combination of Barrett and Koji.

In light of all of the foregoing, it is respectfully submitted that this application is now in condition to be allowed and the early issuance of a notice of allowance is respectfully solicited.

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